

ORDINANCE NO. 2005- 15

**AN ORDINANCE ADDING ARTICLE VII TO CHAPTER 14, AND
AMENDING ARTICLE II, CHAPTER 110, AND
SECTION 110-802(A), CHAPTER 110, OF
THE CODE OF THE CITY OF FAIRFAX, VIRGINIA,
PERTAINING TO SEXUALLY-ORIENTED BUSINESSES.**

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 14 of the Code of the City of Fairfax, Virginia, is hereby amended to include Article VII: Adult Uses, which shall read in its entirety as follows:

ARTICLE VII. ADULT USES

Sec. 14-384. Declaration of policy.

It shall be the public policy of the City of Fairfax, Virginia, and the City Council of the City of Fairfax, Virginia hereby declares, that the licensing of adult uses is required to protect the public health, safety and general welfare, and the City Council of the City of Fairfax hereby exercises its regulatory authority under the police power.

Sec. 14-385. Definitions.

The following words, terms and phrases, when used in this article shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Adult bookstore* or *adult video store* means an establishment that has twenty (20) percent or more of its stock for sale or rent on the premises, or has twenty (20) percent or more of its stock on display either in plain view or in an enclosed or partitioned area, in books, magazines, other periodicals, videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(2) *Adult entertainment* means dancing, modeling or other live entertainment if the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons; or the showing of films, motion pictures, videotapes, slides, photographs, CD-ROMs, DVD-ROMs, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(3) *Adult merchandise* means magazines, books, other periodicals, videotapes, films, motion pictures, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices, or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs; or, lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

(4) *Adult model studio* means a commercial establishment, including a lingerie store or novelty store, in which a person performs or simulates specified sexual activities, exposes specified anatomical areas, or engages in other performances intended for the sexual stimulation or titillation of patrons.

(5) *Adult motel* means a motel, hotel, or similar commercial establishment that: (i) provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and advertises the availability of this sexually-oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or (ii) offers a sleeping room for rent for a time period of less than ten hours; or (iii) allows a tenant or occupant to subrent the sleeping room for a time period of less than ten hours.

(6) *Adult movie theater* means an enclosed building regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons, excluding movies that have been rated "G," "PG," "PG-13," or "R" by the Motion Picture Association of America.

(7) *Adult nightclub* means a restaurant, bar, club, or similar establishment that regularly features adult entertainment.

(8) *Adult store* means an establishment having twenty percent (20%) or more of its stock-in-trade in adult merchandise.

(9) *Adult use* means any adult bookstore, adult video store, adult model studio, adult motel, adult movie theater, adult nightclub, adult store, business providing adult entertainment, or any other establishment that regularly exploits an interest in matter relating to specified sexual activities or specified anatomical areas or regularly features live entertainment intended for the sexual stimulation or titillation of patrons.

(10) *Applicant* means the owners, managers, and any other persons having an ownership interest, financial interest, or managerial responsibility in an adult use. For a corporation, partnership, limited liability company, or other legal entity, "applicant" includes each officer, director, partner, manager or principal of the entity, and the managers of the business.

(11) *Employee* means an individual working or performing services for any adult use, including any independent contractor who provides services on behalf of any adult use to the patrons of such adult use, whether or not the individual receives any remuneration, gratuity, or tips of any kind, or pays the permittee or manager for the right to perform or entertain in the adult use.

(13) *Entertainer* means a person performing adult entertainment.

(14) *Live entertainment* means entertainment provided in person including, but not limited to, musical performances, music played by disc jockeys, public speaking, dramatic performances, dancing, modeling, or comedy performances.

(15) *Permittee* is defined as the person(s) or legal entity to whom a city business license for an adult use has been issued.

(16) *Specified anatomical areas* means less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(17) *Specified sexual activities* means human genitals in a state of sexual stimulation or arousal; sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or female breast, including masturbation.

Sec. 14-386. Permit required from chief of police; application; issuance; duration; renewal.

(a) Every applicant either operating or desiring to operate an adult use, in addition to obtaining any required business license pursuant to Article II of this Chapter, shall apply to the chief of police for a permit to conduct such adult use. Each such application shall be accompanied by a fee in the amount of \$500.00.

(b) Information required on and with the permit application shall include, but not be limited to, the following:

(1) The applicant's full name, age, sex, race, weight, height, hair and eye color, address, telephone number, date and place of birth and social security number.

(2) Names and addresses of references.

(3) Whether the applicant has been convicted of any felony or misdemeanor, and, if so, the nature of the offense, when and where convicted, and the penalty or punishment assessed.

(4) Whether the applicant holds or has held, in the name of this business or any other, any other permits under this ordinance or a similar adult use ordinance from another locality within the past five years, and, if so, the names and locations of such other permitted businesses.

(5) Whether the applicant has been denied a permit or has had a permit revoked under any statute or ordinance requiring a permit to operate an adult business or adult use, and, if so, when and where the denial or revocation occurred.

(6) Photograph and fingerprints of applicant.

(7) Name, including any fictitious names, and address of the adult use for which a permit is sought.

(8) A criminal records check of the applicant, which shall include a Virginia state criminal records check and a local police records check from the jurisdiction in which the applicant resides, shall be provided by the applicant with the application, along with the applicant's written authorization to investigate whether the information provided by the applicant is true.

(9) A description of the intended adult use, and, if adult entertainment is to be provided, a detailed description of such entertainment.

(10) A statement of whether the special use permit required pursuant to Section 110-393 of the code for the intended adult use has been obtained, and on what date it was granted.

(11) Written declaration, dated and signed by the applicant, and notarized, certifying that the information contained in the application is true and correct.

(c) The chief of police shall act on the application within thirty (30) days of the filing of an application containing all of the information required by this section, unless information requested from other law enforcement agencies is not received within that 30-day period, in which case the chief of police shall have an additional 30 days to act on the application. Upon the expiration of the applicable time period, unless the chief of police requests and is granted an extension of time for no more than ninety (90) days, and has provided reasonable grounds for such extension, the applicant may, at its option, begin operating the adult use for which the permit is sought, unless and until the chief of police notifies the applicant of a denial of the application and states the reasons for denial.

(d) The applicant shall be issued a permit unless the city's investigation or the information furnished by the applicant shows any of the following:

(1) The applicant has failed to provide information required by this article or has falsely answered a question.

(2) The applicant has been convicted of a violent felony (for the purposes of this section, "violent felony" shall mean rape, robbery, malicious wounding, aggravated sexual battery, manslaughter, or murder) within the past fifteen years.

(3) The applicant has been convicted of a felony not listed in subsection (2) above within the past five years.

(4) The applicant has been convicted of a crime of moral turpitude or a crime involving the obscenity laws within the past three years.

(5) The applicant has been denied a permit or has had a permit revoked within the past 12 months under any statute or ordinance requiring a permit to operate an adult business or adult use.

(6) Failure of the applicant's adult use to comply with the city's business license, zoning, building, plumbing, utility, health, electric or fire prevention codes, or with any other applicable city or state laws or regulations.

(7) The application fee has not been paid.

(8) The applicant has not obtained the special use permit required by Section 110-393 of the code.

(e) If the application is denied, the chief of police shall notify the applicant of the denial and state the reasons for the denial.

(f) The permit shall be valid for twelve (12) months from the date of issuance, and may be renewed in the same manner as it was initially obtained. The application fee for a renewal permit shall be \$300.00. No permit shall be transferable.

(g) Any changes in the officers, directors, partners, managers or principals of the business entity to which the permit is issued or in the managers of the adult use shall be reported to the chief of police within five (5) days of the change, and an application for the new owners, officers, directors, partners, managers, or principals of the entity, or managers of the business shall be submitted for review in accordance with subsection (c) above within ten (10) business days of the change. In the event the chief of police denies the application, the applicant shall have ten (10) business days to terminate its relationship with the owners, officers, directors, partners, managers, or principals of the entity, or managers of the business, that are the subject of the denied application. If the relationship is not terminated, then the chief of police may revoke the permit.

(h) The issuance of a permit hereunder shall not constitute receipt of the zoning approvals required by Chapter 110, Article II, Division 15, nor shall it operate as evidence that the permitted adult use complies with the requirements of Chapter 110, Article II, Division 15.

Sec. 14-387. Same; grounds for revocation.

The chief of police may revoke any permit issued pursuant to this article for the following:

(a) Fraud, misrepresentation or any false or misleading statement contained in the application.

(b) Conviction of the permittee, an employee, or manager for any felony, crime involving moral turpitude, or crime involving the obscenity laws after the permit is issued.

For a corporation, partnership, limited liability company, or other legal entity, "permittee"

includes each officer, director, partner, manager or principal of the entity, and the managers of the business.

(c) The permittee or an employee or manager of the permittee has knowingly allowed possession, use or sale of illegal controlled substances in or on the premises.

(d) The permittee or an employee or manager of the permittee has knowingly allowed prostitution on the premises.

(e) The permittee or an employee or manager of the permittee has refused to allow an inspection of the adult use as authorized by this article.

(f) On two or more occasions within a 12-month period, employees or managers of the adult use committed an offense in or on the premises of the adult use for which a conviction has been obtained constituting:

- (1) Aiding, abetting or harboring a runaway child;
- (2) Prostitution or promoting of prostitution;
- (3) Exposing minors to the materials or services provided by the adult use;
- (4) Dissemination of obscenity;
- (5) Sexual assault; or
- (6) Violation of Section 54-227 of this Code.

The fact that a conviction is being appealed shall have no effect on the revocation of the permit.

(g) The permittee is convicted of violations regarding any taxes or fees related to the adult use.

(h) The permittee has failed to operate or manage an adult use in a peaceful and law-abiding manner.

(i) The permittee or an employee or manager of the permittee, except a permittee or employee of a permittee of an adult motel, has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual activity to occur in or on the permitted premises.

(j) The permittee has been operating an adult use not approved under the applicable permit.

(k) The permittee has failed to comply with the provisions of this article.

(l) The permittee's business fails to comply with other applicable city or state laws or regulations.

Sec. 14-388. Procedure upon denial of an application or revocation of a permit.

(a) If the chief of police denies an application or revokes a permit, he shall notify the applicant or permittee in writing of such action, the reasons therefor, and the right to request a hearing. Such notice shall be given via registered mail to the address of record of the applicant or permittee, and, in the case of revocation of a permit, shall also be given by hand delivering such notice to the manager on duty during normal business hours. To receive a hearing, the applicant or permittee must make a written hearing request which must be received by the chief of police within ten (10) days of the date of the notice of denial or revocation. If a timely hearing request is not received by the chief of police, the decision of the chief of police shall be final. If a hearing is properly requested, it shall be held within ten (10) days from receipt of the hearing request. The hearing shall be presided over by the chief of police. The applicant or permittee shall have the right to present evidence and argument or to have counsel do so. The chief of police may have counsel present also. Within five (5) days of the hearing, the chief of police shall render his decision which shall be final. A permittee must discontinue operation of its adult use when the decision to revoke the permit becomes final.

(b) When an imminent threat of substantial harm to public health or safety requires such action, the chief of police may immediately revoke a permit issued under this article by so stating in a written notice to the permittee. When action is taken pursuant to this subsection, the permittee shall immediately discontinue operation of its adult use, but shall have the right to a hearing as stated in subsection (a).

Sec. 14-389. Availability of prompt judicial review.

After denial of an initial or renewal application or after revocation of a permit by the chief of police, the applicant or permittee may seek prompt judicial review of such administrative action in the Circuit Court of Fairfax County. Any such request for judicial review shall be filed within thirty (30) days of when the administrative action becomes final.

Sec. 14-390. Inspection.

(a) In addition to any existing legal authority, representatives of city departments shall have the authority to inspect an adult use for the purpose of determining compliance with the provisions of this article.

(b) The provisions of subsection (a) of this section shall not apply to sleeping rooms of an adult motel which are currently being rented by a customer.

Sec. 14-391. Regulations pertaining to adult uses providing adult entertainment.

(a) For purposes of this section, adult entertainment is defined as dancing, modeling or other live entertainment if the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

(b) No person shall provide adult entertainment for patrons of an adult use except upon a stage located in an area open to all patrons of the business. The stage shall be at least 18 inches above the level of the floor and separated by a distance of at least three feet from the nearest area occupied by patrons. No patron shall be permitted within three feet of the stage while the stage is occupied by an entertainer.

(c) The adult use shall provide separate dressing room facilities for female and male entertainers which shall not be occupied or used in any way by anyone other than them.

(d) The adult use shall provide entertainers access between the stage and the dressing rooms which is completely separated from the patrons. If separate access is not physically feasible, the establishment shall provide a walk aisle at least four feet wide for entertainers between the dressing room area and the stage with a railing, fence or other barrier separating the patrons and the entertainers which prevents any physical contact between patrons and entertainers.

(e) No entertainer shall have physical contact with any patron and no patron shall have physical contact with any entertainer while in or on the premises of the adult use.

(f) No patron shall directly pay or give any gratuity to any entertainer. A patron who wishes to pay or give a gratuity to an entertainer shall place the gratuity in a container that is at all times located separately from the entertainers for the purpose of preventing any

physical contact between a patron and an entertainer. No entertainer shall solicit any gratuity from any patron.

(g) Patrons must be at least 18 years of age.

(h) This section shall not apply to an employee of an establishment who, while acting as a waiter, waitress, host, hostess, or bartender, comes within three feet of a patron. No employee shall engage in any specified sexual activity or other activity intended for the sexual stimulation or titillation of patrons, or expose any specified anatomical area while acting as a waiter, waitress, host, hostess, or bartender.

Sec. 14-392. Regulations pertaining to adult motels.

(a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in section 14-385 of this Code.

(b) No person who is in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have an adult use permit shall rent or subrent a sleeping room to a person, and within ten hours from the time the room is rented, rent or subrent the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms rent or subrent mean the act of permitting a room to be occupied for any form of consideration.

Sec. 14-393. Transfer of permit prohibited.

(a) A permittee shall not operate an adult use at any places or locations other than at the addresses designated in the approved permits.

(b) Permits are not transferable, whether by sale, lease, merger or otherwise, to another person or legal entity. The permit shall automatically be null and void in the event of transfer.

Sec. 14-394. Public nudity and obscenity prohibited.

Nothing in this article shall be construed to permit any conduct which violates Section 54-227 or Division 2, Article VI, Chapter 54 of this Code.

Sec. 14-395. Violations.

Except as permitted in Section 14-386(c), operation of an adult use without a permit is prohibited. Violations of this article shall be unlawful and subject to the provisions of Section 1-11 of this Code.

Sec. 14-396. Severability and conflict.

(a) Should any portion or portions of this Article be declared unconstitutional or invalid by a valid decree or order of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of this Article in its entirety or of any part thereof other than that portion or portions of the Article declared to be invalid.

(b) To the extent any provision of this Article may conflict with any other provision in the Code of the City of Fairfax, Virginia, existing on the effective date of the ordinance establishing this Article, then this Article shall prevail.

BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia, that Article II, Chapter 110 of the Code of the City of Fairfax, Virginia, is hereby amended to add Division 15: Adult Uses, which shall read in its entirety as follows:

ARTICLE II.
Division 15. Adult Uses

Sec. 110-391 Declaration of Policy.

Within the City, it is acknowledged that there are some uses, often referred to as adult uses, which because of their nature can have a negative impact on nearby property, particularly when several of them are concentrated under certain circumstances or located in direct proximity to a residential neighborhood, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods. These special regulations are itemized in this division. The primary control or regulation is for the purpose of preventing the concentration or location of adult uses in a manner that would create such adverse effects. The definition of adult uses is found in section 110-392 of this Division.

Sec. 110-392 Definitions.

For the purposes of this Division, certain words and phrases shall have the meanings assigned to them in Section 14-385 of this Code, except in those situations where the context clearly indicates a different meaning. The term "person" shall mean any individual, firm, partnership, corporation, company, association, or joint stock association.

Sec. 110-393. Special use permit required for adult uses.

A special use permit, as provided for in Article II, Chapter 110, Division 13, Section 110-366 of the City Code, is necessary for the establishment of an adult use, as defined in Sec. 14-385, in any of the zoning districts where the use is permitted, as set forth in Sec. 110-394 below. Special use permits required for adult uses may be approved only by the City Council. Applications for special use permits requesting the establishment of an adult use shall be processed and considered in accordance with the provisions set forth in Sec. 110-366. A special use permit for an adult use may be issued by the City Council after finding that the location, size, design, and operating characteristics of the proposed adult use will be compatible with and will not adversely affect or be materially detrimental to the neighboring uses.

Sec. 110-394. Adult uses limited to specified zoning districts.

Adult uses shall be permitted only in the C-3 General Commercial District, governed by Article XV, Chapter 110, of the City Code. In addition to the special use permit requirements set forth in Sec. 110-366, adult uses shall be subject to all of the requirements and regulations governing the zoning district in which the adult use is located.

Sec. 110-395. Location and extent of adult uses.

The following restrictions apply to the location and extent of adult uses in the C-3 General Commercial District:

- (a) Except pursuant to Sec. 110-395(e) below, no special use permit shall authorize an adult use less than five hundred (500) feet from any Residential District or Planned Development District boundary.

- (b) Except pursuant to Sec. 110-395(e) below, no special use permit shall authorize an adult use less than five hundred (500) feet from any single- or multiple-family dwelling; church or other place of worship; public park; public or private elementary, intermediate, or high school; public library; day care center; nursing home; hotel; or motel.
- (c) Except pursuant to Sec. 110-395(e) below, all off-street parking spaces serving such adult uses shall be located at least three hundred (300) feet from the nearest Residential District boundary; any single- or multiple-family dwelling; church or other place of worship; public park; public or private elementary, intermediate, or high school; public library; day care center; or nursing home.
- (d) Except pursuant to Sec. 110-395(e) below, no two (2) such adult uses shall be located within one thousand (1,000) feet of each other.
- (e) City Council may waive the locational provisions in Sec. 110-395(a), (b), (c), and (d) above under certain circumstances, if the following findings are made:
 - (1) That the proposed use will not be contrary to the public interest or be injurious to nearby properties, and that the spirit and intent of this ordinance will be observed;
 - (2) That the establishment of an additional adult use in the area will not conflict with any council adopted objectives, plans, or programs for the area;
 - (3) That the establishment of an additional adult use will not be contrary or detrimental to any program of neighborhood conservation or renewal in adjacent residential areas; and
 - (4) That all applicable regulations of the ordinance and special conditions attached to the special use permit will be observed.

For the purposes of Sec. 110-395(a) through (d) above, distances shall be measured on a straight line (1) from the structure containing the adult use to the nearest point of property named in (a) through (d) above, or (2) between the structure containing the adult use and the structure containing any other adult use.

Sec. 110-396. Signage.

Signs or attention-getting devices for the business shall not contain any words or graphics depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in Section 14-385(12) and (13) of this Code. The signage shall otherwise comply with the provisions set forth in Division 7, Article II of this Chapter.

Sec. 110-397. Hours of Operation.

Adult uses shall not begin service to the public or any outside activity before 6:00 a.m. Hours of operation for any adult movie theater, adult entertainment establishment, or adult nightclub shall not extend after 2:00 a.m. Hours of operation for any adult bookstore, adult video store, or adult store shall not extend after 12:00 midnight.

Sec. 110-398. Location of adult merchandise within the adult use.

Adult merchandise shall be located in a separate room or other area inaccessible to persons under 18 years of age.

Sec. 110-399. Laws and ordinances governing obscenity applicable.

Nothing in this ordinance shall be construed to permit uses in violation of the laws governing obscenity and public nudity found in Article VI, Chapter 54, of the City Code; Title 18.2, Chapter 8, Sections 372 through 391.1 of the Code of Virginia; and Title 18, Part I, Chapter 71 of the United States Code.

Sec. 110-400. Severability and conflict.

(a) Should any portion or portions of this Division be declared unconstitutional or invalid by a valid decree or order of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of this Division in its entirety or of any part thereof other than that portion or portions of the Division declared to be invalid.

(b) To the extent any provision of this Division may conflict with any other provision in the Code of the City of Fairfax, Virginia, existing on the effective date of the ordinance establishing this Division, then this Division shall prevail.

BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia, that Section 110-802(a), Article XV, Chapter 110 of the Code of the City of Fairfax, Virginia, is hereby amended by adding a new subsection (6), which shall read in its entirety as follows:

Sec. 110-802. Same--With special use permit.

(a) The following uses are permitted in the C-3 general commercial district with a special use permit issued by the city council in accordance with the provisions of section 110-366:

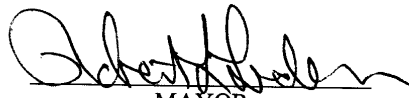
(6) Adult uses, in accordance with Division 15, Article II, Chapter 110.

This ordinance shall become effective upon adoption as provided by law.

INTRODUCED: August 30, 2005

PUBLIC HEARING: September 13, 2005

ENACTED: September 13, 2005


MAYOR
9/23/05
DATE

ATTEST:


City Clerk

	<u>Vote</u>
Councilwoman Cross	Aye
Councilman Greenfield	Aye
Councilwoman Lyon	Aye
Councilman Rasmussen	Aye
Councilman Silverthorne	Aye
Councilmember Winter	Aye